

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 98-6854**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TOM J. BILLMAN,

Defendant - Appellant.

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**No. 98-7786**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

TOM J. BILLMAN,

Defendant - Appellant.

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Appeals from the United States District Court for the District of Maryland, at Baltimore. J. Frederick Motz, Chief District Judge.  
(CR-89-466-JFM, CA-97-2120-JFM)

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Submitted: March 16, 1999

Decided: April 16, 1999

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Before LUTTIG and WILLIAMS, Circuit Judges, BUTZNER, Senior Circuit Judge.

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No. 98-6854 affirmed and No. 98-7786 dismissed by unpublished per curiam opinion.

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Charles Ivey Billman, Arlington, Virginia, for Appellant. Barbara Slaymaker Sale, Assistant United States Attorney, Joyce Kallam McDonald, Assistant United States Attorney, Baltimore, Maryland, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

In this consolidated appeal, Tom J. Billman appeals the district court's orders granting his motion under former Fed. R. Crim. P. 35(b) and denying his motion for a new trial under Fed. R. Crim. P. 33. Considering the grant of the motion for reduction of sentence first, we have reviewed the record and the district court's order and find no abuse of discretion. See United States v. Guglielmi, 929 F.2d 1001, 1004-05 (4th Cir. 1991). There is no plain error in the district court's consideration of the financial evidence in granting the motion for a reduction of sentence. See Fed. R. Crim. P. 52(b); United States v. Mitchell, 1 F.3d 235, 239 (4th Cir. 1993). Accordingly, we affirm the district court's order that is the subject of No. 98-6854.

In attempting to appeal the district court's order denying his Fed. R. Crim. P. 33 motion, No. 98-7786, Billman filed an untimely notice of appeal. We dismiss for lack of jurisdiction. The time periods for filing notices of appeal are governed by Fed. R. App. P. 4. These periods are "mandatory and jurisdictional." Browder v. Director, Dep't of Corrections, 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)). Defendants in criminal prosecutions have ten days within which to file in the district court notices of appeal from judgments or final orders. Fed. R. App. P. 4(b). The only exceptions to the

appeal period are when the district court extends the time to appeal "[u]pon a showing of excusable neglect." Id.

The district court entered its order on August 12, 1998; Appellant's notice of appeal was filed on August 26, 1998, which is beyond the ten-day appeal period. Appellant's failure to note a timely appeal or obtain an extension of the appeal period leaves this court without jurisdiction to consider the merits of Appellant's appeal. We therefore dismiss the appeal. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

No. 98-6854 - AFFIRMED

No. 98-7786 - DISMISSED